PUBLIC NOTICE

US Army Corps
of Engineers
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435

Fax No. 505-342-3498

Permit Application No:	Date:
2005 00060	June 7, 2005
Phone:	**Suspense Date:**
(505) 342-3283	June 7, 2010

In Reply Refer to:

District Engineer, ATTN: CESPA-OD-R

REGIONAL GENERAL PERMIT
UTILITY LINES AND INTAKE AND OUTFALL STRUCTURES

Interested parties are hereby notified that, in accordance with 33 CFR 322.2(f), 323.2(h), and 325.2(e)(2) published in the Federal Register November 13, 1986, the Fort Worth, Albuquerque, and Tulsa districts of the U.S. Army Corps of Engineers (USACE) are issuing this regional general (RGP) to authorize the work described herein pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The purpose of this RGP is to expedite authorization of recurring work that would have minimal adverse impact on the aquatic environment. This RGP contains provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require an individual permit. However, compliance with the conditions contained in this RGP does not guarantee authorization of the work under this RGP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this permit are prohibited unless authorized by a separate permit.

This RGP has been designated CESWF-05-RGP-2 in the Fort Worth District, TXG300011 in the Tulsa District, and 200500060 in the Albuquerque District, and would replace RGP SWF-99-RGP-2 in the Fort Worth District, TXG300011 in the Tulsa District, and TX-OYT-0491 in the Albuquerque District. The current RGP expired on February 7, 2005.

SCOPE OF WORK: Work authorized by this RGP is limited to the discharge of dredged or fill material into waters of the United States (U.S.), including wetlands, and the placement of structures and performance of work in, or affecting, navigable waters of the U.S., associated with the construction and maintenance, including the placement of backfill and bedding, and other dredged and fill material associated with utility lines and intake and outfall structures, provided there is no more than minimal adverse impact to the aquatic environment associated with the work, including any change in pre-construction contours or drainage patterns within affected waters of the U.S. The area of waters of the U.S. that is disturbed must be limited to the minimum amount necessary for construction of the utility line. Appropriate and practicable compensatory mitigation shall be required for unavoidable adverse impacts to waters of the U.S. This RGP does not authorize activities that would have more than minimal adverse impacts on the aquatic environment or cause more than minimal reduction in the reach of waters of the U.S.

A "utility line" is defined as any pipe or pipeline for the transportation of a gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities or structures that drain a water of the U.S., such as drainage tile, however, it does apply to pipes conveying drainage from another area.

Intake and outfall structures are not required to be directly related to a utility line to be authorized by this permit. These structures shall be constructed so as to prevent erosion of the bank below and to the sides of the structure. The construction of temporary coffer dams equipment ramps, roads, and similar structures necessary for the construction of intake and outfall structures are also authorized by this permit.

This RGP authorizes mechanized land clearing necessary for the installation of utility lines, provided the cleared area is kept to the minimum necessary and there is no more than minimal adverse impact associated with the activity.

Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for up to three months provided that the material is not placed in a manner that will allow it to be dispersed by currents or other forces. The USACE amy extend the period of sidecasting to a period not to exceed 180 days, where appropriate. In wetlands, the top 6 to 12 inches of a trench should generally be backfilled with topsoil from the trench.

Materials to be placed into waters of the U.S. are restricted to clean native soils obtained at the site and concrete, sand, gravel, rock, and other coarse aggregate. All material used shall be suitable quality and free of toxic pollutants in toxic quantities. Immediately upon completion of the

construction of the utility line, all excess material and temporary structures must be removed to upland areas and any exposed slopes and stream banks must be stabilized.

The activities listed above are authorized by this RGP provided they meet all of the following criteria:

1. Adverse impacts to waters of the U.S., including wetlands, shall be avoided and minimized to the extent practicable through the use of alternatives that have less adverse impact on the aquatic environment. Projects shall be designed to pass low, normal, and expected high flows, to not interfere with the migration of aquatic organisms, avoid the creation of impoundments, and maintain the preconstruction conditions to the extent practicable.

2. All fills and structures above the existing ground elevation in waters of the U.S. shall be constructed and placed so as to minimize adverse impacts to local hydrology. Projects shall not promote the drainage of waters of the U.S. or cause unnecessary impoundment of water.

3. All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during and after construction until all exposed soil is permanently stabilized. Measures to control erosion and run-off, such as berms, silt screens, sedimentation basins, revegetation, mulching, and similar means, shall be implemented. All damage resulting from erosion and/or sedimentation shall be repaired.

4. The water velocity at any intake structure screen shall be no greater than 0.5 feet per second and the mesh size of the intake structure screen shall be no greater than 0.25 inch.

5. Compensatory mitigation shall be provided for unavoidable adverse impacts to waters of the U.S., including wetlands, when appropriate and practicable.

6. Preconstruction Notification (PCN): Prior to construction, a prospective permittee must notify the USACE of the proposed work in accordance with the requirements of the "Preconstruction Notifications" section below (see pages 7-10).

7. Permittees shall submit a written compliance report to the USACE within 120 days after completion of all work that includes the following:

a. a statement addressing whether the authorized work and mitigation required to date have been implemented in accordance with the USACE authorization, including all general and special conditions;

b. a summary of all construction and mitigation activities associated with the project that have occurred, including documentation of the completion of all work and compliance with all terms and conditions of the permit;

c. a comparison of the pre- and post-construction conditions of the project area;

d. a detailed description of all impacts that have occurred to waters of the U.S.;

e. a map showing the final configuration of restored, enhanced, created, and preserved waters of the U.S., including wetlands;

f. a presentation of the species of plants, number and acreage of vegetation planted, final topographic elevations of the project, and a map describing the location of the plantings;

g. a discussion about whether disturbed areas, such as stream banks, and temporary impact areas are revegetating adequately and not suffering erosion damage; and

h. photographs and maps as appropriate to illustrate the information presented.

The prospective permittee shall not begin any activity until notified in writing by the USACE that the activity is authorized under this RGP with any special conditions imposed by the USACE. The USACE will respond as promptly as practicable to all PCNs.

CONDITIONS OF THE RGP: In addition to the limitations in the scope of work, work authorized by this RGP is subject to the general conditions listed in Appendix A. References in the general conditions to 'completion of construction' refer to completion of work within the permit area for the activity. Also, for projects requiring water quality certification, projects are subject to the conditions of the water quality certification that applies.

LOCATION OF WORK: The provisions of this RGP will be applicable to all waters of the U.S., including all navigable waters of the U.S., in the Fort Worth, Albuquerque, and Tulsa districts of the USACE, within the state of Texas and Louisiana (see Appendixes B and C of the Proposed RGP), with the following exception:

From the Precinct Line Road crossing of the West Fork Trinity River in Tarrant County, Texas, to the State Highway 34 crossing of the Trinity River in Kaufman County, Texas, dredged material cannot be used for cofferdams, equipment ramps, or similar structures. Dredged material may only be used for backfill in those projects where the trench has been completely dewatered. In such cases, dredged material can only be used to within two feet of the top of the trench and must be covered by two feet of clean fill material. Material excavated from these sections of the river must be properly disposed of at an upland site and covered to prevent re-entry into the river or contamination of surface or ground water. The location of all disposal sites must be included in the application for authorization.

The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

WATER QUALITY CERTIFICATION: The Texas Commission on Environmental Quality (TCEQ) has certified pursuant to Section 401 of the CWA and Title 30, Texas Administrative Code, Chapter 279, for the activities for which it is responsible, that activities conducted under this RGP should not result in a violation of established Texas Water Quality Standards provided reasonable best management practices are included and followed (See General Condition 32 in Appendix A).

The Railroad Commission of Texas (RRC) has granted certification pursuant to Section 401 of the CWA, for the activities associated with the exploration, development, and production, including pipeline transportation, of oil, gas, or geothermal resources that may result in a discharge to waters of the United States, that activities conducted under this RGP comply with applicable water quality laws conditional on the addition of language to the permit advising that a RRC permit may be required for any point source discharge of pollutants in those cases (see Appendix E).

The Louisiana Department of Environmental Quality (LDEQ) has stated that the LDEQ has no objections for the renewal of this RGP under Water Quality Certification JP 050121-05/AI#101986/CER20050001 (see Appendix E).

AUTHORIZATION FROM OTHER AGENCIES: This RGP does not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. The permittee is responsible for obtaining any additional federal, state, or local permits or approvals that may be required, including, but not limited to:

1. When streambed materials such as sand, shell, gravel and marl would be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department (TPWD), 4200 Smith Road, Austin, Texas 78744. All activities occurring on lands owned or managed by the TPWD require a signed agreement from that agency prior to commencing operations.

2. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned streambeds, state-owned uplands, or coastal state-owned lands in Texas may require the issuance of a lease or easement from the GLO.

3. Any work that would be conducted on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.

4. Projects involving government property at USACE reservoirs require submission of detailed design information to the reservoir manager and USACE approval for the proposed activity to occur on government property,

including a real estate consent to easement.

5. Activities within a 100-year floodplain may require a floodplain development permit from the local floodplain administrator or, in Texas, the TCEQ Flood Management Unit, (512) 239-4771 (see also general condition 31). In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

6. In accordance with the federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure associated with activities other than oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation under the terms of the Texas Pollutant Discharge Elimination System (TPDES) program through the TCEQ, Water Quality Division (MC-150), P.O. Box 13087, Austin, Texas 78711-3087. In accordance with the federal Clean Water Act and Texas Statute, a point source discharge of pollutants from an outfall structure associated with oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation by the U.S. Environmental Protection Agency (EPA), Region 6 Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas, Texas 75802, and the Railroad Commission of Texas, Oil and Gas Division, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711-2967, respectively.

7. Activities such as clearing, grading, and excavation that would disturb one or more acres of land may require a National Pollutant Discharge Elimination System (NPDES) storm water management permit from the U.S. Environmental Protection Agency (EPA), Region 6, Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas, Texas 75202 or a TPDES storm water management permit from the TCEQ, Water Quality Division (MC-150), P.O. Box 13087, Austin, Texas 78711-3087.

8. The use of scrap tires for bank stabilization and erosion control requires notification of the TCEQ Waste Tire Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

9. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Texas Natural Resource Code annotated 91.101, may require authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340, and/or the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

10. The construction, operation, maintenance, or connection of facilities at the borders of the U.S. are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Activities that would require such authorization and would affect an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

11. Activities outside the USACE permit area that may affect a federally-listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service (FWS) to prevent a violation of the Endangered Species Act under Section 9. For further information, contact the U.S. Fish and Wildlife Service in Arlington: Stadium Centre Building, 711 Stadium Drive East, Suite 252, Arlington, Texas 76011, (817) 277-1100, http://arlingtontexas.fws.gov; Austin: Compass Bank Building, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512) 490-0057, http://ifw2es.fws.gov/austintexas/; Corpus Christi: TAMU-CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 994-9005, http://ifw2es.fws.gov/corpuschristitexas/; Houston: 17629 El Camino Real, Suite 211, Houston, Texas 77058, (713) 286-8282, http://ifw2es.fws.gov/clearlaketexas; or Lafayette: 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506, (337) 291-3100, http://southeast.fws.gov/es/lafayette.htm .

12. Activities may affect state-listed rare, threatened, or endangered species. For a rare, threatened, and endangered species review in the State of Texas, submit projects to: Wildlife Habitat Assessment, Texas Parks and Wildlife Department, 3000 South IH 35, Suite 100, Austin, Texas 78704.

13. Activities in the recharge zone of the Edwards Aquifer require a Water Pollution Abatement Plan and activities in the contributing zone of the Edwards Aquifer that disturb more than 5 acres of land under edwards Aquifer rules. For further information contact the Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215.

PRECONSTRUCTION NOTIFICATION: Preconstruction notifications (PCNs) requesting verification from the USACE of authorization under this RGP must be in writing and include a description of the project, proposed construction schedule, and the name, address, and telephone number of a point of contact who can be reached during normal business hours. The information may be assembled and submitted in a format convenient to the applicant. All pages, including maps, drawings, figures, sheets, etc., must be on 8 1/2 by 11 -inch paper or fold easily to 8 1/2 by 11-inch dimensions. The detail of the information should be commensurate with the size and environmental impact of the project. The description of the project must include at least the following information:

1. The purpose and need for, the project.

2. A delineation, determination, and characterization of wetlands and other waters of the U.S. in the area that would be affected by the proposed work, and a description of the project's likely impact of the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at (http://www.swf.usace.army.mil/pubdata/environ/regulatory/jurisdiction/wlman87.pdf), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. In addition, include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

3. A vicinity map, or maps, on copies of 7.5-minute U.S. Geological Survey (USGS) quadrangle maps, county maps, scaled aerial photographs, or other suitable maps, clearly showing the location of all temporary and permanent elements of the project, including the entire route of the project for utility lines and any associated borrow pit(s), disposal site(s), staging area(s), etc. This map, or maps, or an additional map, or maps, must show the project area in relation to nearby highways and other roads, and other pertinent features. A ground survey is not required to obtain this information. Identify all base maps, e.g. Fort Worth, Texas 7.5-minute USGS quadrangle, etc. Clearly identify and number the location of each proposed utility line crossing of a water of the U.S. and any appurtenant structure(s) in waters of the U.S.

4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the U.S., including wetlands, and a description of the proposed activities and structures, such as the dimensions and/or locations of roads (both temporary and permanent), coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, haul roads, and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the U.S. affected by activities associated with the project, as well as any additional area of non-waters of the U.S. in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the U.S. The USACE permit area(s) includes associated borrow pits, disposal areas, staging areas, etc. in many cases. For each crossing or activity, such as of a utility line, in a water of the U.S. include the following site-specific information when applicable:

a. a brief characterization of the crossing area including type (stream, forested wetland, non-forested wetland, etc.), function, value

b. distance between ordinary high water marks;

c. length, width, and area of waters of the U.S. affected (temporary and permanent);

d. width of temporary and permanent rights-of-way;

e. proposed method of crossing (bore, trench, etc.);

f. source, type, and volumes of dredged and/or fill material to be discharged;

5. A written discussion of the alternatives considered and the rationale for

selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. The application must also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

6. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

7. Documentation that the amount of area impacted is the minimum necessary to accomplish the project and, in cases where the activity would result in a change to pre-construction contours and/or drainage patterns, a description of the anticipated impacts of the changes, the reason(s) that the changes are necessary, and documentation that the changes would not result in more than minimal adverse impact on the aquatic environment.

8. A mitigation plan presenting appropriate and practicable measures planned: a) to avoid and minimize adverse impacts to the aquatic environment, particularly associated with temporary elements of the proposed project, and b) to compensate for the remaining unavoidable adverse impacts to the aquatic environment. If compensatory mitigation for unavoidable adverse impacts to the aquatic environment is not proposed, the application must include documentation that the proposed work would have minimal adverse impact on the aquatic environment without compensatory mitigation, why compensatory mitigation would be inappropriate and/or impracticable, and that compensatory mitigation should not be required. The mitigation plan must include a description of proposed appropriate and practicable actions that would restore, enhance, protect and/or replace the functions and values of the aquatic environment unavoidably lost in the permit area because of the proposed work. See Appendix D for more information.

9. An assessment documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area(s) for the proposed project. Coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is encouraged. See contact information including website address, for FWS offices in "AUTHORIZATION FROM OTHER AGENCIES" section above.

10. A discussion documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area(s) for the proposed project.

11. The applicant should include any other relevant information, including information on hydrology and hydraulics.

Early coordination with the USACE, well before a final PCN is submitted, is beneficial in many cases.

Address PCNs and inquiries concerning proposed activities to the appropriate district office (see Appendix B for boundaries of district offices):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-PER-R, P.O. Box 17300, Fort Worth, TX 76102-0300, telephone: (817) 886-1731, website address: http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESPA-OD-R, P.O. Box 6096, Fort Bliss, TX 79906-0096, telephone: (915) 568-1359, website address: http://www.spa.usace.army.mil/reg/

Tulsa District: Regulatory Branch, U.S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-PE-R, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, telephone: (918) 669-7400, website address: http://www.swt.usace.army.mil/permits/permits.cfm

EVALUATION AND VERIFICATION PROCEDURES: For all discharges within the habitat types or areas listed below, the USACE will coordinate with the resource agencies as specified in the Nationwide Permit (NWP) general condition on notification (currently General Condition 13(e), Federal Register, Vol.67, No.10, Tuesday, January 15, 2002, Vol. 67, No. 30,

Wednesday, February 13, 2002, and Vol. 67, No. 37, Monday, February 25, 2002). The habitat types and areas are:

1. wetlands, typically referred to as a pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.);

2. Baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F.H. Forest Cover Types of the U.S. and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington D.C. 20014. Library of Congress Catalog Card No. 80-54185);

3. the area of Caddo Lake within Texas is designated as a "Wetland of International Importance" under the Ramsar Convention;

4. the Comal River, the San Marcos River, the Pecos River, and Lake Casa Blanca;

5. critical habitat for the Concho water snake (Nerodia Hateri paucimaculata), including areas of the Concho and Colorado Rivers and Ivie (Stacy) Reservoir; Houston toad (Bufo houstonensis); Arkansas River shiner (notropis girardi); Devils River Minnow (Dionda diabolis) - the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; Leon Springs pupfish (Cyprinodon bovines) - Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County. (See also General Condition 15);

Construction may commence only upon written notification by the District Engineer, or his designee, that the project meets the terms and conditions of the RGP. The USACE will respond as promptly as practicable to all PCNs.

It is the permit applicant's responsibility to ensure that all authorized structures and activities continue to meet the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this RGP may be considered for authorization by individual permit.

This RGP shall become effective on the date of the signature of the District Engineers, or their authorized representative(s), and will automatically expire five years from that date unless the permit is modified, revoked, or extended before that date. For activities that have been verified by the USACE as authorized under this RGP, and have commenced, i.e., are under construction, or are under contract to commence, by the verification expiration date, will remain authorized provided the activity is completed within twelve months of the date of expiration, modification, or revocation of the RGP, or by another date determined by the USACE for the specific case, whichever is later, unless discretionary authority is exercised on a case by case basis to modify, suspend, or revoke the authorization.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:
FOR THE DISTRICT ENGINEERS:

John R. Minahan
Colonel, Corps of Engineers
District Engineer
Fort Worth District

CESPA-OD-R
2005 00060

Miroslav P. Kurka
Colonel, Corps of Engineers
District Engineer
Tulsa District

Todd Wang
Lieutenant Colonel, Corps of Engineers
District Engineer
Albuquerque District

NEWS RELEASE

APPENDIX A

GENERAL CONDITIONS

REGIONAL GENERAL PERMIT CESWF-02-RGP-8

1. In verifying authorization under this regional general permit (RGP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to verifying authorization, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.

2. Structures and activities authorized by this RGP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.

3. This RGP is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose: a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. This RGP does not grant any property rights or exclusive privileges; does not authorize any injury to the property of rights of others; and does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. This RGP does not relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located.

4. This RGP may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revokes, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.

5. Modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim damages against the United States (U.S.).

6. This RGP does not authorize interference with any existing or proposed federal project, and does not entitle the permittee to compensation for damage or injury to the structures or activities authorized herein that may result from existing or future operations undertaken by the U.S. in the public interest.

7. No attempt shall be made by permittees to prevent the full and free public use of any navigable water of the U.S.

8. Permittees shall not cause any unreasonable interference with navigation.

9. Permittees shall make every reasonable effort to conduct the activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and tress, particularly hard-mast-producing trees such as oaks and hickories. Permittees shall normally maintain existing buffers around waters of the U.S. and create and/or expand buffers around waters of the U.S. when practicable. Compensatory mitigation plans for projects in, or near streams, other open waters, or wetlands shall normally include provisions for the establishment, maintenance, and legal protection, e.g. deed restrictions, conservation easements, of vegetated buffers to those waters.

10. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity is being performed in accordance with the terms and conditions of this RGP.

11. Permittees must evaluate the effect that the proposed work would have on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest that occur in the permit area. If a known historic property would be encountered, the permittee shall notify the USACE and shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall

immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied.

12. Materials to be placed into waters of the U.S. are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material. All material used shall be free of toxic pollutants in toxic quantities.

13. Permittees shall coordinate all construction activities in federally-maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.

14. Permittees shall place all heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

15. Activities that are likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or that are likely to destroy or adversely modify the critical habitat of such species are not authorized. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

16. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date using native vegetation to the maximum extent practicable. Permittees shall remove all excess material and temporary fill and structures placed in waters of the U.S., including wetlands, to upland areas and stabilize all exposed slopes and stream banks immediately upon completion of construction. Permittees shall return all areas affected by temporary fills and/or structures to preconstruction conditions or better, including revegetation with native vegetation. All material removed must be placed at least 100 feet from any water of the U.S., including wetlands, and adequately contained to prevent the return to any water of the U.S., including wetlands.

17. Permittees shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

18. Permittees shall not permanently restrict or impede the passage of low, normal, or expected high flows unless the primary purpose of the activity is to temporarily impound water or for authorized detention ponds for stormwater management.

19. Permittees shall properly maintain all structures and fills to ensure public safety.

20. Permittees shall ensure that projects have no more than minimal adverse impacts on public water supply intakes.

21. Stream realignment is not authorized by this RGP.

22. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

23. Permittees are not authorized to discharge dredged or fill material into waters of the U.S. for purposes of disposal into, or reclamation of, an aquatic area, such as a wetland.

24. Permittees shall not use a jet barge or similar equipment for trench excavation.

25. Permittees shall mark structures and fills, particularly in navigable waters of the U.S., when appropriate, so that their presence will be known to boaters.

26. Permittees shall mark intake and/or outfall structures and other fills and structures in navigable waters, when appropriate, so that boaters will notice their presence.

27. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

28. Permittees are responsible for compliance with all terms and conditions of the RGP for all activities within the Department of the Army permit area of a project authorized by this RGP, including those taken on behalf of the permittee by other entities such as contractors and subcontractors. Permittees assume all liabilities associated with fills and impacts that are incurred by individuals and/or organizations working under contracts with the permittee. Before beginning the work authorized herein, or directing a contractor to perform such work, permittees shall ensure that all parties read, understand and comply with the terms and conditions of the permit. The USACE strongly encourages preconstruction meetings with all construction activities of the project.

29. Permittees shall conduct dredging and excavation activities with land based equipment rather than from the water body whenever practicable.

30. Permittees must comply with Federal Emergency Management Agency (FEMA), or FEMA-approved local floodplain development requirements in the placement of any permanent above-grade fills in waters of the U.S., including wetlands, within the 100-year floodplain. The 100-year floodplain will be identified through FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. A permanent above-grade fill is a discharge of dredged or fill material into waters of the U.S., including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the water body to dry land. Structural fills authorized by nationwide permits, 3, 25, 36, etc., are not included.

31. For all discharges proposed for authorization in Dallas, Denton, and Tarrant Counties, that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), permittees shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website at: http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp.

32. To satisfy Texas Commission on Environmental Quality (TCEQ) water quality certification requirements for all projects to which Section 401 water quality certification by the TCEQ applies, the permittee must use at least one best management practice (BMP) from each of the first three categories of on-site water quality management and comply with item d, concerning contaminated dredged material below to satisfy TCEQ water quality certification requirements. Descriptions of the BMPs may be obtained from the TCEQ by calling (512) 239-5366, by calling one of the Corps district regulatory offices identified in the "PRECONSTRUCTION NOTIFICATIONS" section of this RGP, or from the USACE, Fort Worth District, web site at http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp. The TCEQ-required BMPs are as follows:

a. Erosion Control: Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). At least one of the following best management practices (BMPs) must be maintained and remain in place until the area has been stabilized.

Temporary Vegetation
Blankets/Matting
Mulch
Sod

b. Post-Construction TSS Control: After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by at least one of the following BMPs.

Retention/Irrigation
Extended Detention Basin
Vegetative Filter Strips
Constructed Wetlands
Wet Basins

c. Sedimentation Control: The project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. At least one of the following BMPs must be maintained and remain in place until project completion.

Sand Bag Berm
Silt Fence
Triangular Filter Dike

Rock Berm
Hay Bale Dike

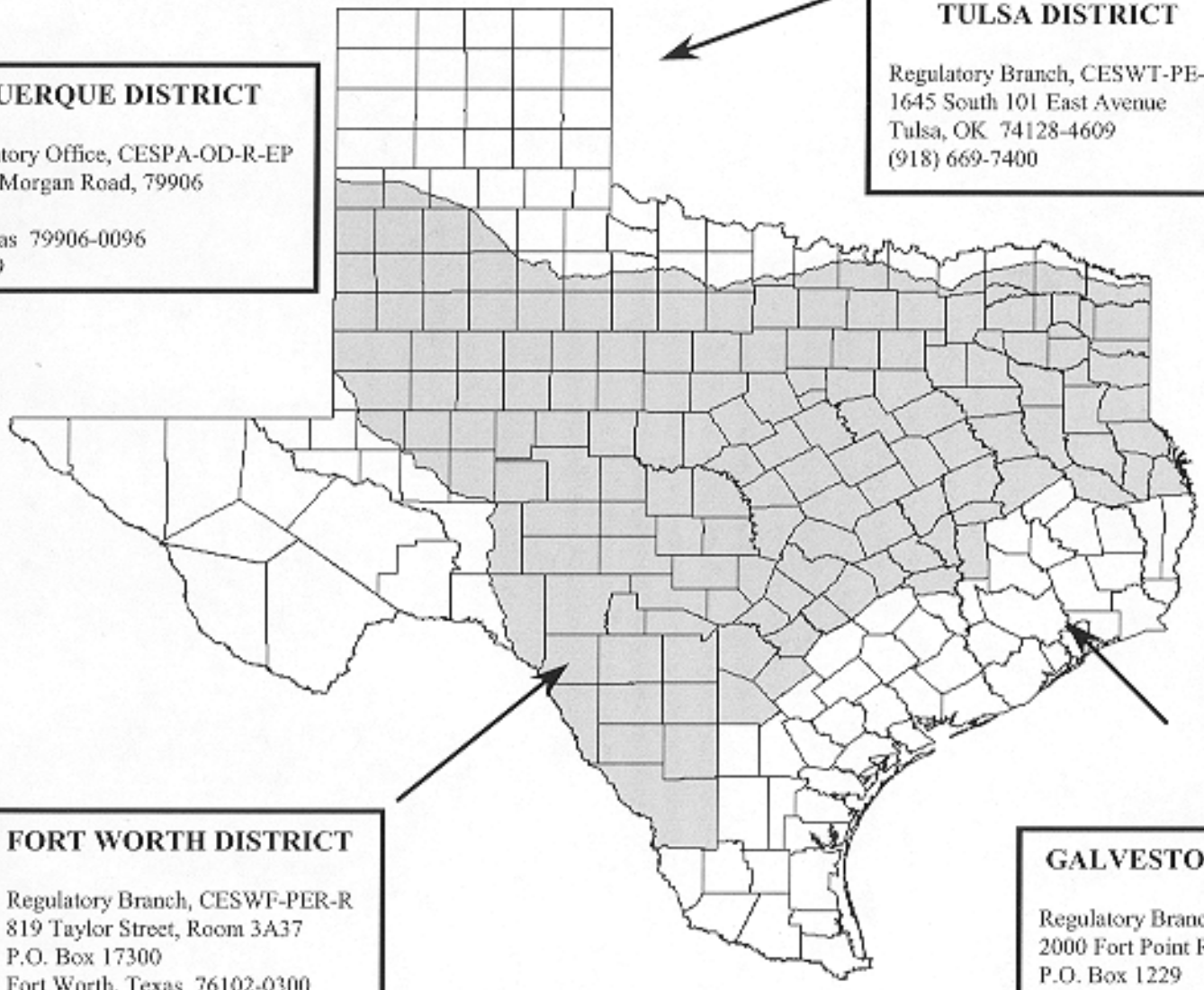
Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMPs must be maintained and remain in place until the dredged material is stabilized.

Hydraulically dredged material shall be disposed of in contained disposal areas. Effluent from contained disposal areas shall not exceed a TSS concentration of 300mg/l.

d. Contaminated Dredged Material: If contaminated dredge material that was not anticipated or provided for in the permit application is encountered during dredging, operations shall cease immediately. Pursuant to 26.039(b) of the Texas Water Code, the individual operating or responsible for the dredging operations shall notify the commission's emergency response team at (512) 463-7727 as soon as possible, and not later than 24 hours after the discovery of the material. The applicant shall also notify the Corps that activities have been temporarily halted. Contaminated dredge material shall be remediated or disposed of in accordance with TCEQ rules. Dredging activities shall not be resumed until authorized in writing by the Commission.

Contaminated dredge material is defined as dredged material which has been chemically, physically, or biologically altered by man-made or man-induced contaminants which include, but are not limited to solid waste, hazardous waste and hazardous waste constituent as those terms are defined by 30 TAC Chapter 335, Pollutants defined by Texas Water Code 26.001 and Hazardous Substances as defined in the Texas Health and Safety Code, 361.003.

APPENDIX B



ALBUQUERQUE DISTRICT

El Paso Regulatory Office, CESPA-OD-R-EP
Building 6380 Morgan Road, 79906
P.O. Box 6096
Fort Bliss, Texas 79906-0096
(915) 568-1359

TULSA DISTRICT

Regulatory Branch, CESWT-PE-R
1645 South 101 East Avenue
Tulsa, OK 74128-4609
(918) 669-7400

FORT WORTH DISTRICT

Regulatory Branch, CESWF-PER-R
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, Texas 76102-0300
(817) 886-1731

GALVESTON DISTRICT

Regulatory Branch, CESWG-PE-R
2000 Fort Point Road
P.O. Box 1229
Galveston, Texas 77553-1229
(409) 766-3930

February 5, 2002

APPENDIX C

NAVIGABLE WATERS OF THE U.S.

For purposes of Section 10 of the Rivers and Harbors Act of 1899, the following sections of rivers, including their lakes and other impoundments, are considered to be navigable waters of the U.S. that fall within the jurisdiction of the Fort Worth, Albuquerque, and Tulsa districts of the U.S. Army Corps of Engineers in the states of Texas and Louisiana.

ANGELINA RIVER: From the Sam Rayburn Dam in Jasper County upstream to U.S. Highway 59 in Nacogdoches and Angelina counties and all U.S. Army Corps of Engineers land associated with B.A. Steinhagen Lake in Tyler and Jasper counties, Texas.

BIG CYPRESS BAYOU: From the Texas-Louisiana state line in Marion County, Texas, upstream to Ellison Creek Reservoir in Morris County, Texas.

BRAZOS RIVER: From the point of intersection of Grimes, Washington, and Waller counties upstream to Whitney Dam in Hill and Bosque counties, Texas.

COLORADO RIVER: From the Bastrop-Fayette county line upstream to Longhorn Dam in Travis County, Texas.

NECHES RIVER: U.S. Army Corps of Engineers lands associated with B.A. Steinhagen Lake in Jasper and Tyler counties, Texas.

RED RIVER: From Denison Dam on Lake Texoma upstream to Warrens Bend which is 7.25 miles northeast of Marysville, Texas, and from the U.S. Highway 71 bridge north of Texarkana, Texas, to the Oklahoma-Arkansas Border.

RIO GRANDE: From the Zapata-Webb county line upstream to the point of intersection of the Texas-New Mexico state line and Mexico.

SABINE RIVER: From the point of intersection of the Sabine-Vernon parish line in Louisiana with Newton County, Texas upstream to the Sabine River-Big Sandy Creek confluence in Upshur County, Texas.

SULPHUR RIVER: From the Texas-Arkansas state line upstream to Wright Patman Dam in Cass and Bowie counties, Texas.

TRINITY RIVER: From the point of intersection of Houston, Madison, and Walker counties upstream to Riverside Drive in Fort Worth, Tarrant County, Texas.

APPENDIX D

MITIGATING ADVERSE IMPACTS TO WATERS

OF THE UNITED STATES

U.S. Army Corps of Engineers (USACE) evaluation of a project proposal submitted for authorization under this permit includes a determination of whether the applicant has taken sufficient measures to **mitigate** the project's likely adverse impacts to the aquatic ecosystem (See USACE Regulatory Guidance Letter 02-02 dated December 24, 2003, and USACE district websites for more detailed information.) Applicants should employ the following three-step sequence in mitigating likely adverse project impacts: 1) take appropriate and practicable measures to **avoid** potential adverse impacts to the aquatic ecosystem; 2) employ appropriate and practicable measures to **minimize** unavoidable adverse impacts to the aquatic ecosystem; and 3) undertake appropriate and practicable measures to **compensate** for adverse impacts to the aquatic ecosystem that cannot be reasonably avoided or minimized. **Compensatory mitigation**, then, is the restoration, enhancement, creation, or preservation of wetlands and other waters of the United States (U.S.) to compensate for adverse impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized.

Compensatory mitigation should replace those aquatic system functions that would be lost or impaired because of the proposed activity. The appropriate type and amount of compensatory mitigation depends on the nature and extent of the project's likely adverse impact on those functions performed by the aquatic area(s) that would be impacted. These function include, but are not limited to, flood storage and conveyance; providing habitat for fish, aquatic organisms, and other wildlife, including endangered species; sediment and erosion control; groundwater recharge; nutrient removal; water supply; production of food, fiber, and timber; and recreation. Compensatory mitigation should also be commensurate with the scope and degree of the anticipated impacts and be practicable in terms of costs, existing technology, and logistics, in light of the overall project purpose.

In general, in-kind compensatory mitigation is preferable to out-of-kind and should occur as close to the location of the adverse impacts as practicable, generally in the same watershed. However, environmentally preferable out-of-kind and/or off-site compensatory mitigation may be acceptable. Such mitigation options as mitigation banking in-lieu fee mitigation may be appropriate when on-site or other off-site compensatory mitigation options are not available or not practicable. In some cases, it is appropriate to provide partial compensation at one location, such as the impact site, with the remainder occurring at an off-site location.

Normally, restoration or enhancement of wetland functions is preferable to wetland creation because the probability of successfully restoring or enhancing wetlands is greater than the probability of successfully creating new wetlands, and restoration and enhancement activities are less likely to impact upland and open water habitats. The preservation of existing wetlands is appropriate as compensatory mitigation only in exceptional situations.

Compensatory mitigation plans should include a thorough description of the proposed mitigation area; a description of all proposed work and structures such as grading, fills, excavation, plantings, and water level control structures; plan and cross-section drawings of pertinent work and structures; a statement explaining how adverse impacts to local hydrology will be minimized; and a proposal for monitoring the success of the proposed mitigation plan. Generally, monitoring should continue for at least five years after mitigation activities are completed, providing planting survival and ecological success requirements have been achieved. To achieve long-term success of mitigation plan, an appropriate real estate arrangement, such as a deed restriction, may be required.